Khairy Jamaluddin v Dato' Seri Anwar bin Ibrahim and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 02(f)-43–04 OF 2019(W) AND 03–2–08 OF 2020(N)
ABANG ISKANDAR CJ (SABAH AND SARAWAK), NALLINI PATHMANATHAN, VERNON ONG, HASNAH HASHIM AND RHODZARIAH BUJANG FCJJ
1 JUNE 2022

Civil Procedure — Appeal — Notice of appeal — Whether filing of single notice of appeal against more than one decision on interlocutory applications was bad in law and defective — Whether filing of single notice of appeal was permissible provided the notice clearly and concisely set out the decisions that were being appealed against with the relevant details and particulars of each decision — Whether Federal Court's decision in Deepak Jaikishan v A Santamil Selvi a/p Alau Malay @ Anna Malay [2017] 4 MLJ 11 concerning filing of notice of appeal should be considered in light of the peculiar facts in that case — Whether Deepak Jaikishan should not be construed as laying down strict and absolute rule that whenever more than one decision arose from separate interlocutory applications, the filing of a single notice of appeal against all the said decisions was bad in law, defective and invalid

The two appeals herein one by Khairy Jamaluddin ('KJ') and the other by Guinness Anchor Marketing Sdn Bhd ('GAM') were heard together because the questions of law raised in both the appeals concerned the striking out of the appellants' notices of appeal to the Court of Appeal ('COA') on the ground that they were ambiguous, defective and bad in law. In KJ's case, the appellant had applied to amend his re-amended defence ('the amendment application') at the conclusion of the trial of a defamation suit brought against him by the respondent. The trial judge dismissed the amendment application and allowed the respondent's claim in the suit. Two separate orders were, therefore, issued one in respect of the dismissal of the amendment application, the other in respect of the decision on the suit itself. The appellant filed a single notice of appeal to the COA in respect of both those decisions. The notice of appeal stated that the appellant was appealing against the whole of the trial judge's decision to allow the respondent's claim, 'including (but not limited to)' his decision in respect of the amendment application. At the COA, the respondent applied to strike out the notice of appeal on the ground that it was ambiguous, defective and bad in law. Relying upon the Federal Court's decision in *Deepak Jaikishan v A Santamil Selvi a/p Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam a/l Perumal, deceased) & Ors* [2017] 4 MLJ 11 ('Deepak Jaikishan'), the respondent contended that the appellant should have

filed separate notices of appeal for the dismissal of the amendment application and for the decision on the suit as each of those two decisions were distinct and separate matters. The COA agreed and further held that the notice of appeal was ambiguous as to whether the appellant was appealing against the dismissal of the amendment application as he had not given any particulars with respect to that decision whereas he had set out particulars concerning the decision on the suit itself. In GAM's case, the appellant and respondent had separately appealed to the judge in chambers against the registrar's decision on assessment of damages. The judge heard both the appeals together, allowed each of them in part and made a separate order in respect of each appeal. In a single notice of appeal to the COA, the appellant appealed against the judge's decision in respect of both the appeals. The COA struck out the notice of appeal, agreeing with the respondent that the appellant should have filed a separate notice of appeal for each of the two decisions. The questions of law on which the appellants were granted leave to appeal to the Federal Court were essentially concerned with whether the COA was right to strike out the notices of appeal when the disputing parties were just a sole plaintiff and a sole defendant and the notices of appeal were sufficiently clear as to which part of the respective decisions was being appealed against. The appellants took the common ground that the COA had misconstrued/misapplied *Deepak Jaikishan* because that case was concerned with the filing of a single notice of appeal against a single judgment that allowed eight separate interlocutory applications filed by nine defendants.

Held, unanimously allowing the appeals and ordering the two cases to be remitted back to the COA to be heard on the merits:

(1) The Federal Court's decision in *Deepak Jaikishan* should not be read as laying down a strict and absolute rule that whenever there was more than one decision arising from separate interlocutory applications, the filing of a single notice of appeal was not in compliance with the Rules of the Court of Appeal 1994 ('the RCA 1994'). The filing of a single notice of appeal was permissible subject to a caveat — that all the decisions appealed against must be clearly and concisely set out with the relevant details and particulars of each decision in the notice of appeal (see para 30).

(2) The Federal Court's opinion in *Deepak Jaikishan* should be read in the light of the peculiar facts of that case. There were altogether eight distinct and separate applications that were filed by nine defendants and each of those applications was supported by the affidavits of different deponents on different grounds. The High Court judge heard the eight applications together. The outcome of those applications was delivered in a single decision which did not identify the separate orders made by the court. The notice of appeal stated in vague and uncertain terms that it was an appeal '… against the whole of the said decision granting the order in

terms of all the defendants' applications ...' (see para 27).

(3) The primary objective of r 5(3) of the RCA 1994 was to enable the opposing party to be properly informed of the case they had to answer. If the opposing party was unable to fathom which decision or which part of a decision was being appealed against, it would lead to uncertainty and misapprehension as to what points they were required to answer to. Such a situation would undoubtedly cause prejudice and miscarriage of justice to the opposing party (see para 28).

(4) In KJ's appeal, the two decisions appealed against, ie, the decision after full trial and the decision on the amendment application were concisely and clearly identified in the notice of appeal. As such, there was no ambiguity as to what decision was being appealed against. The respondent therefore had not suffered any prejudice or miscarriage of justice. Similarly, in GAM's appeal, the notice of appeal set out the specific details and particulars of that part of the decision of the High Court which was being appealed against. The respondent could not have been misled as to which part of the decision the appellant was unhappy with. As there was no ambiguity as to what was being appealed against in the notices of appeal pertaining to both the aforesaid appeals, the respondents in both appeals were put on proper notice and there was no question of prejudice or miscarriage of justice occasioning to them (see paras 32–34).

[Bahasa Malaysia summary

Kedua-dua rayuan di sini satu oleh Khairy Jamaluddin ('KJ') dan satu lagi oleh Guinness Anchor Marketing Sdn Bhd ('GAM') didengar bersama kerana persoalan undang-undang yang dibangkitkan dalam kedua-dua rayuan berkenaan dengan penarikan notis rayuan perayu kepada Mahkamah Rayuan ('MR') atas alasan bahawa ianya tidak jelas, defektif dan salah menurut undang-undang. Dalam kes KJ, perayu telah memohon untuk meminda pembelaannya yang dipinda semula ('permohonan pindaan') pada akhir perbicaraan kes saman fitnah terhadapnya oleh responden. Hakim bicara menolak permohonan pindaan tersebut dan membenarkan tuntutan responden di dalam saman tersebut. Oleh itu, dua perintah berasingan dikeluarkan, satu berkenaan dengan penolakan permohonan pindaan tersebut dan satu lagi berkenaan dengan keputusan mengenai saman tersebut. Perayu memfailkan notis rayuan kepada MR berkenaan dengan kedua-dua keputusan tersebut. Notis rayuan tersebut merupakan rayuan terhadap keseluruhan keputusan hakim bicara kerana membenarkan tuntutan responden, 'termasuk (tetapi tidak terhad kepada)' keputusannya berkenaan dengan permohonan pindaan. Di MR, responden memohon untuk membatalkan notis rayuan dengan alasan bahawa ianya adalah tidak jelas, defektif dan menyalahi undang-undang. Bergantung kepada keputusan Mahkamah Persekutuan dalam *Deepak Jaikishan v A Santamil Selvi a/p Alau Malay @ Anna Malay (as the*

A *executrix of the estate of Balasubramaniam a/l Perumal, deceased) & Ors* [2017] 4 MLJ 11 ('Deepak Jaikishan'), responden menghujahkan bahawa perayu sepatutnya memfailkan notis rayuan berasingan untuk pembatalan permohonan pindaan dan untuk keputusan mengenai saman tersebut kerana setiap dua keputusan tersebut adalah perkara berbeza dan berasingan. Panel B MR bersetuju dan selanjutnya memutuskan bahawa notis rayuan tersebut adalah tidak jelas sama ada perayu merayu terhadap pembatalan permohonan pindaan tersebut kerana tidak diberikan apa-apa butir-butir berkenaan dengan keputusan tersebut sedangkan butir-butir mengenai keputusan mengenai saman tersebut sendiri telah ditetapkan. Dalam kes GAM, perayu dan C responden telah merayu secara berasingan kepada hakim dalam kamar terhadap keputusan pendaftar mengenai penilaian ganti rugi. Hakim mendengar kedua-dua rayuan bersama-sama, membenarkan masing-masing sebahagian daripada mereka sebahagiannya dan membuat perintah berasingan berkenaan dengan setiap rayuan. Dalam satu notis rayuan kepada MR, perayu D merayu terhadap keputusan hakim berkenaan dengan kedua-dua rayuan. MR membatalkan notis rayuan tersebut, bersetuju dengan responden bahawa perayu sepatutnya memfailkan notis rayuan berasingan untuk setiap dua keputusan. Persoalan undang-undang di mana perayu diberi kebenaran untuk merayu ke Mahkamah Persekutuan pada dasarnya berkenaan dengan sama ada E MR adalah betul untuk membatalkan notis rayuan tersebut apabila pihak-pihak yang mempertikaikan hanyalah plaintif tunggal dan defendan tunggal dan notis rayuan cukup jelas mengenai bahagian mana keputusan masing-masing sedang dirayu. Perayu menghujahkan perkara yang sama bahawa MR telah terkhilaf dalam mengaplikasikan kes *Deepak Jaikishan* F kerana kes tersebut berkaitan dengan pemfailan satu notis rayuan terhadap satu penghakiman yang membenarkan lapan permohonan interlokutori berasingan yang difailkan oleh sembilan defendan.

G **Diputuskan**, sebulat suara membenarkan rayuan-rayuan dan memerintahkan kedua kes tersebut diremitkan ke Mahkamah Rayuan untuk pendengaran di atas merit kes-kes:

(1) Keputusan Mahkamah Persekutuan dalam *Deepak Jaikishan* tidak boleh ditafsirkan peraturan yang ketat dan mutlak bahawa apabila terdapat H lebih daripada satu keputusan yang timbul daripada permohonan interlokutori yang berasingan, pemfailan satu notis rayuan tidak mematuhi Kaedah-Kaedah Mahkamah Rayuan 1994 ('KKMR 1994'). Pemfailan satu notis rayuan tersebut dibenarkan tertakluk kepada syarat — bahawa semua keputusan yang dirayu mestilah jelas dan ringkas I dengan butiran dan butir-butir yang relevan bagi setiap keputusan di dalam notis rayuan tersebut (lihat perenggan 30).

(2) Alasan Mahkamah Persekutuan di dalam *Deepak Jaikishan* harus ditafsirkan berdasarkan fakta-fakta unik kes tersebut. Terdapat lapan permohonan yang berbeza dan berasingan yang difailkan oleh sembilan

defendan dan setiap permohonan tersebut disokong oleh afidavit yang berbeza dengan alasan yang berbeza. Hakim Mahkamah Tinggi mendengar lapan permohonan bersama-sama. Hasil permohonan tersebut disampaikan dalam satu keputusan yang tidak membezakan perintah berasingan yang dibuat oleh Mahkamah. Notis rayuan dinyatakan di dalam terma-terma yang tidak jelas bahawa ianya adalah rayuan '... terhadap keseluruhan keputusan tersebut yang memberikan perintah seperti dipohon di dalam semua permohonan defendan-defendan ...' (lihat perenggan 27).

(3) Objektif utama k 5(3) KKMR 1994 adalah untuk membolehkan pihak lawan dimaklumkan dengan tepat mengenai kes yang perlu dijawab. Sekiranya pihak lawan tidak dapat memahami keputusan mana atau bahagian mana keputusan yang dirayu, ianya akan membawa kepada ketidakpastian dan salah faham tentang perkara yang perlu dijawab. Keadaan sedemikian sudah pasti akan menyebabkan prejudis dan tidak adil kepada pihak satu lagi (lihat perenggan 28).

(4) Di dalam rayuan KJ, kedua-dua keputusan yang dirayu iaitu, keputusan selepas perbicaraan penuh dan keputusan mengenai permohonan pindaan telah dikenal pasti secara ringkas dan jelas dalam notis rayuan tersebut. Oleh itu, tiada ketidakpastian mengenai keputusan apa yang sedang dirayu. Oleh itu, responden tidak mengalami sebarang prejudis atau tidak adil. Begitu juga dalam rayuan GAM, notis rayuan telah dinyatakan butiran dan butir-butir khusus bahagian keputusan Mahkamah Tinggi yang sedang dirayu. Responden tidak boleh dikatakan tidak faham mengenai bahagian mana keputusan yang tidak berpuas hati dengan perayu. Oleh kerana tidak ada ketidakpastian mengenai perkara yang dirayu dalam notis rayuan yang berkaitan dengan kedua-dua rayuan yang disebutkan di atas, responden dalam kedua-dua rayuan telah dikenakan notis yang sewajarnya dan tiada persoalan mengenai prejudis atau ketidakadilan yang berlaku (lihat perenggan 32–34).]

Cases referred to

A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors [2015] 4 MLJ 583, CA (folld)

Berjaya Development Sdn Bhd v Keretapi Tanah Melayu Bhd [2014] 4 MLJ 606, CA (refd)

Datuk Aziz Ishak & Anor v YB Haji Khalid Abdul Samad [2012] 1 LNS 1341, CA (refd)

Deepak Jaikishan v A Santamil Selvi a/p Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam a/l Perumal, deceased) & Ors [2017] 4 MLJ 11, FC (refd)

Foong Yok Kok v Prudential Assurance Malaysia Bhd [2020] 2 MLJ 759; [2020] 1 LNS 85, CA (refd)

A *Jagdis Singh a/l Banta Singh v Outlet Rank (M) Sdn Bhd* [2013] 4 MLJ 213, CA (refd)
Lim Choon Seng v Lim Poh Kwee [2020] 5 MLJ 587, FC (refd)
Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor [1991] 3 MLJ 160, SC (refd)

B

Legislation referred to

Courts of Judicature Act 1964 s 67
Rules of Court 2012 O 18 r 19(1)
Rules of the Court of Appeal 1994 rr 5(1), (3), (4), 103

C

Appeal from: Civil Appeal Nos W-02(W)-2016–10 of 2017 and N-02(W)-1764–08 of 2018 (Court of Appeal, Putrajaya)

Sarah Maalini Abishegam (Shafee & Co) in Civil Appeal No 02(f)-43–04 of 2019 (W) for the appellant.
D *SY Ng (with HL Choon, Magdalene Soon and Loo Hui En) (Raja, Darryl & Loh) in Civil Appeal No 03–2–08 of 2020(N) for the appellant.*
Leela J Jesuthasan (Chambers of Leela J) in Civil Appeal No 02(f)-43–04 of 2019 (W) for the respondent.
E *Krishna Dallumah (with YH Yong) (Krishna & Indran) in Civil Appeal No 03–2–08 of 2020(N) for the respondent.*

Vernon Ong FCJ:

F

INTRODUCTION

[1] These two appeals emanated from two distinct and separate actions involving different parties; one action (*Dato' Seri Anwar Ibrahim v Khairy Jamaluddin*) was tried in the Kuala Lumpur High Court and the other action (*Man Seng Trading & Marketing Sdn Bhd v Guinness Anchor Marketing Bhd*) was tried in the Seremban High Court. Khairy Jamaluddin's appeal to the Court of Appeal was struck out as was Guinness Anchor's appeal to the Court of Appeal. We heard the two appeals together since the questions of law in both appeals relate to the striking out of the appellants' respective notices of appeal to the Court of Appeal on the grounds that it is ambiguous, defective and bad in law.

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[2] The questions of law for this court's determination fall within the realm of adjectival law also called procedural law — the area of law that deals with the rules of procedure governing evidence, pleading and practice. As such, we think that it is sufficient to set out the salient facts leading up to the striking out of the two notices of appeal in question.

I

KHAIRY JAMALUDDIN'S APPEAL NO 02(F)-43–04 OF 2019 ('FIRST APPEAL')

[3] The first appeal relates to the appellant's notice of appeal to the Court of Appeal which was struck out after the Court of Appeal upheld the respondent's preliminary objection on the grounds that the notice of appeal is ambiguous, invalid and unlawful as it was filed against two separate orders issued by the High Court.

Questions of law

[4] The appellant obtained leave of this court to appeal on the following three questions of law:

Whether the Federal Court's decision in *Deepak Jaikishan v A Santamil Selvi a/p Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam a/l Perumal, deceased) & Ors* [2017] 4 MLJ 11 can be interpreted as prohibiting the filing of a single notice of appeal in relation to the following circumstances:

(a) where there is the sole plaintiff and sole defendant in the suit concerned;

(b) where the single judgment delivered on a date at the end of the whole trial in a defamation suit pertains to the judgment favouring the plaintiff's claim which included the rejection of the application by the defendant to amend the re-amended defence of fair comment; and

(c) where the single notice of appeal specified in the said appeal pertains to the whole of the said judgment including the matter decided pertaining to the said application to amend, taking into consideration the adoption by the Federal Court of the opinion of the Court of Appeal in the written judgment of the latter emanating from the same case.

[5] In this case the appellant/defendant had filed an application to amend the re-amended defence ('the amendment application') after the trial on the evidence had been concluded. Subsequently, the learned trial judge heard submissions in respect of both the amendment application and after trial together. After hearing of submissions, the learned trial judge delivered his oral decisions in respect of the amendment application and the trial. The amendment application was dismissed and the respondent/plaintiff's claim in damages for defamation was allowed with costs. Separate orders were issued by the High Court in respect of the decision after trial and the decision dismissing the amendment application. The appellant, dissatisfied with the two decisions filed a single notice of appeal to the Court of Appeal. The notice of appeal in question reads as follows:

SILA AMBIL PERHATIAN bahawa Khairy Jamaludin, Perayu/Defendan yang dinamakan di atas yang tidak berpuas hati dengan keseluruhan keputusan Yang Arif Tuan Azizul Azmi bin Adnan yang diberikan di Mahkamah Tinggi di Kuala Lumpur pada 29 haribulan September 2017, termasuk (tetapi tidak terhad) kepada Kandungan 129 (permohonan defendan untuk meminda 'Pembelaan Terpinda Semula' bertarikh 11.2.2016, yang difailkan pada 14.3.2017), dengan ini ingin merayu kepada Mahkamah Rayuan terhadap keseluruhan keputusan tersebut di mana tuntutan Plaintif telah dibenarkan ...

[6] Incidentally, it is also on record that the appellant subsequently filed a second notice of appeal to the Court of Appeal against the High Court's decision on the amendment application. This second notice of appeal is, however, not in issue in this appeal.

[7] After the respondent had given written notice to the appellant of his intention to raise a preliminary objection to the notice of appeal, the respondent filed a notice of motion in the Court of Appeal to strike out the notice of appeal.

[8] The Court of Appeal agreed with the respondent that the notice of appeal was defective and bad in law and struck out the notice of appeal. The Court of Appeal held that: (i) applying *Deepak Jaikishan* the issue was whether there was a distinct and separate application resulting in a distinct and separate order by the court; (ii) that if there was a distinct and separate application and a distinct and separate order of the court, then, there ought to be a separate notice of appeal filed in respect of the separate and distinct order appealed against; (iii) this case fell squarely within the principle enunciated in *Deepak Jaikishan* as there were two separate orders issued by the High Court; and (iv) there was some ambiguity as to whether the appellant was also appealing against the dismissal of the amendment application. The particulars on the dismissal of the amendment application was conspicuously absent in the notice of appeal as being the decision appealed against, as opposed to the main trial where the appellant had set out the particulars of the judgment appealed against.

GUINNESS ANCHOR'S APPEAL NO 03–02–08 OF 2020(N) ('SECOND APPEAL')

[9] The second appeal concerns the appellant's notice of appeal to the Court of Appeal which was struck out by the Court of Appeal upon upholding the preliminary objection of the respondent at the outset of the hearing of the appeal.

Questions of law

[10] The four questions of law in the second appeal are:

(a) whether a notice of appeal that appeals against decision arising from more than one appeals or applications heard together and decided on the same day, but which sets out the details or particulars of each of the decisions against which appeal is made, is valid?

(b) whether the answer to the second question by the Federal Court in *Deepak Jaikishan* is confined to a situation where the notice of appeal has not set out the details or particulars of each of the decisions against which appeal is made?

(c) whether the decision of the Court of Appeal in *A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors* [2015] 4 MLJ 583 at para 31 of the judgment is still good law? and

(d) whether the approval of the record of appeal by the respondent constitutes a fresh step within the meaning of r 103 of the Rules of the Court of Appeal 1994?

[11] At the High Court, both the appellant and the respondent had filed their respective notices of appeals to the judge in chambers against the deputy registrar's decision on the assessment of damages. Both appeals were heard together by the learned judge and both appeals were allowed in part. Separate High Court orders were issued in respect of the appellant's and respondent's appeals.

[12] The appellant being dissatisfied with the High Court decisions, filed a notice of appeal at the Court of Appeal which reads as follows:

> SILA AMBIL PERHATIAN bahawa Perayu yang dinamakan di atas yang tidak berpuas hati dengan sebahagian keputusan Yang Arif Tuan Muhammad Jamil Bin Hussin yang diberikan di Mahkamah Tinggi Malaya di Seremban pada 31 Julai 2018, merayu kepada Mahkamah Rayuan terhadap sebahagian sahaja keputusan tersebut yang:
>
> (i) Menolak rayuan Perayu terhadap kehilangan nama baik ('Goodwill') Responden sejumlah RM416,900.00 dan kehilangan keuntungan Responden sejumlah RM500,885.97 terdiri seperti berikut:
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> (a) Jumlah RM175,125.64 bagi tahun 2002;
>
> (b) Jumlah RM175,125.64 bagi tahun 2003; dan
>
> (c) Jumlah RM150,634.69 bagi tahun 2004.
>
> Membenarkan rayuan Responden atas kehilangan keuntungan Responden

A sejumlah RM648,000.00 bagi tahun 2005 hingga 2008.

[13] When the appeal came up for hearing in the Court of Appeal, the respondent mounted a preliminary objection arguing that the notice of appeal is bad in law because the appellant should have filed two notices of appeal instead of one notice of appeal as there were two separate orders issued by the High Court. The Court of Appeal agreed with the respondent's argument and struck out the appellant's notice of appeal.

C FIRST APPEAL — SUBMISSIONS OF PARTIES

[14] Learned counsel for the appellant in the first appeal advanced the following arguments:

D (a) the notice of appeal is crystal clear that the appeal is against the whole decision which included the amendment decision which was made simultaneously by the learned judge;

E (b) the preparation and issuance of the two separate orders were an administrative decision by the Deputy Registrar. Consequently, the appellant filed the second notice of appeal on the amendment decision only in abundance of caution;

F (c) the learned trial judge delivered his decision on the amendment application and his decision at the end of the trial were given together. It is clear that the issue on the amendment application is incorporated seamlessly in part of the written judgment of the learned trial judge. As such, the judgment of the High Court is a composite judgment incorporating both the amendment decision and the decision after the end of trial;

G (d) the Court of Appeal had misread *Deepak Jaikishan* where there was one notice of appeal for multiple orders in respect of multiple applications involving nine defendants. There is only one defendant and one plaintiff in this case and one decision by the High Court of which the amendment decision is part of the main judgment;

H (e) the precise ratio of *Deepak Jaikishan* is that a single notice of appeal is permissible but sufficient particulars must be stated;

I (f) the filing of a notice of appeal is to give the other side proper notice of the appellant's grievance. The purpose of the procedure is to facilitate a proper decision on the merits (*Jagdis Singh a/l Banta Singh v Outlet Rank (M) Sdn Bhd* [2013] 4 MLJ 213). There is no prejudice to the respondent. Sufficient particulars are stated in the notice of appeal; and

(g) even though the adjudged sum is less than RM250,000, leave to appeal to the Court of Appeal is not required as the threshold is the value of the

subject matter and not the subject matter of the decision (*Yap Fook Cheong & Anor v Burkill (Malaya) Sdn Bhd & Anor* [1991] 3 MLJ 160 (SC)).

[15] In reply, learned counsel for the respondent argued firstly that the appeal is incompetent as the adjudged value was below RM250,000 and no prior leave to appeal had been obtained (*Foong Yok Kok v Prudential Assurance Malaysia Bhd* [2020] 2 MLJ 759; [2020] 1 LNS 85 (CA); *Datuk Aziz Ishak & Anor v YB Haji Khalid Abdul Samad* [2012] 1 LNS 1341). Second, at the High Court, the learned trial judge was called upon to decide on two separate and distinct matters: (i) the respondent/plaintiff's claim after full trial; and (ii) the appellant/defendant's interlocutory application filed after the conclusion of the trial to further amend the re-amended defence to include a new defence. The learned trial judge had delivered his decisions in respect of both matters. Third, the appellant had filed a single notice of appeal purportedly against both decisions. As such the notice of appeal is bad in law, defective, ambiguous and uncertain. Instead, separate notices of appeal should have been filed. The question for which leave was granted does not address all the defects. The appellant failed to comply with the mandatory provisions and decided case-law on the filing of appeals (s 67 of the Courts of Judicature Act 1964 ('the CJA 1964'); r 5(1) and (4) of the Rules of the Court of Appeal 1994; *Deepak Jaikishan*; *Lim Choon Seng v Lim Poh Kwee* [2020] 5 MLJ 587. Lastly, it was submitted that the appellant failed to set out in detail each decision he is appealing in the notice of appeal. As such, the notice of appeal is ambiguous and uncertain.

SECOND APPEAL — SUBMISSIONS OF PARTIES

[16] The gist of the points submitted by learned counsel for the appellant were covered by the submissions of appellant counsel in the first appeal. However, learned counsel stressed that the fact that there were two appeals and two separate orders is not determinative. *Deepak Jaikishan* is facts specific on its own and is distinguishable. In this case the notice of appeal clearly identified that portion of the High Court's decision appealed against. As such, there is no ambiguity since the respondent knew exactly what was being appealed against. Therefore, there was no prejudice or miscarriage of justice caused to the respondent.

[17] In reply, learned counsel for the respondent submitted that their preliminary objections were grounded on the Court of Appeal's decision in *Khairy Jamaluddin.* As the first appeal is in fact an appeal against this particular decision of the Court of Appeal, we will now discuss the said decision.

Court of Appeal's decision in Khairy Jamaluddin

[18] The Court of Appeal opined that the principle to be distilled from the decision of the Federal Court in *Deepak Jaikishan*, was not so much about the number of applications or the number of parties but whether there was a distinct and separate application resulting in a distinct and separate order by the court. That if there was a distinct and separate application made and a distinct and separate order of the court issued, then, there ought to be a separate notice of appeal filed in respect of the separate and distinct order appealed against. This case fell squarely within the *Deepak Jaikishan* principle because there were two separate orders issued by the court, one in respect of the main trial and the other in respect of the dismissal of the amendment application. Accordingly, the Court of Appeal decided that the notice of appeal was bad in law due to the appellant's failure to file separate notices of appeal and to set out the details of each and every one of the decisions appealed against. The Court of Appeal also found that there was some ambiguity as to whether the appellant was also appealing against the dismissal of the amendment application; that whilst the notice of appeal stated that the appellant was not satisfied with the whole decision of the judge, it made no mention that the appellant wished to appeal against the dismissal of the amendment application. Further, the particulars of the dismissal of the amendment application was conspicuously absent in the notice of appeal as being the decision appealed against, as opposed to the main trial where the appellant had set out the particulars of the judgment appealed against.

ANALYSIS AND DECISION

[19] The issues in this appeal concern the interpretation of the principles enunciated by this court in *Deepak Jaikishan.* The appellants and respondents in the first and second appeals take a contrary position and the Court of Appeal said it was bound to follow *Deepak Jaikishan* by virtue of the doctrine of stare decisis.

Deepak Jaikishan — Revisited

[20] It is, we think, necessary to revisit the salient facts and the pronouncement of this court in *Deepak Jaikishan.* In the High Court, Santamil had sued nine defendants for damages for the tort of conspiracy to cause injury by unlawful means. Eight applications were filed by all the defendants to strike out the writ and statement of claim. The first application was filed jointly by the first and second defendants, the second application by the third defendant, the third by the fourth defendant, the fourth by the fifth defendant, the fifth by the sixth defendant, the sixth by the seventh defendant,

the seventh by the eighth defendant, and the eighth application by the ninth defendant respectively. The learned judge heard the eight applications together and set her decision down on another date. Later, the learned judge delivered her decision whereby she allowed all eight applications and struck out the writ and statement of claim. Dissatisfied with the High Court decision, Santamil filed a single notice of appeal in the Court of Appeal where it was pleaded that she was '... appeal[ing] to the Court of Appeal against the whole of the said decision granting the order in terms of all the defendants' applications to strike out the plaintiff's claims under O 18 r 19(1) of the Rules of Court 2012'.

[21] Except for the eighth defendant, the rest of the defendants filed seven notices of motion to strike out the appeal on the ground that the notice of appeal was bad in law. They contended that as seven sealed orders were issued by the High Court, seven notices of appeal should have been filed by Santamil instead of only one. The Court of Appeal agreed with the arguments advanced by the defendant and struck out Santamil's notice of appeal. The Court of Appeal decision is reported in *A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors* [2015] 4 MLJ 583 (CA). As the eighth defendant had not made a similar application, the appeal against the eighth defendant was set down for hearing before a different panel of the Court of Appeal.

[22] At the hearing of the appeal against the eighth defendant, counsel for the eighth defendant raised a preliminary objection on the ground that the appeal should be dismissed as the notice of appeal was bad in law. The Court of Appeal dismissed the preliminary objection and proceeded to hear the appeal which was eventually allowed.

[23] The eighth defendant who was dissatisfied with the decision of the Court of Appeal applied for leave to appeal to the Federal Court. Leave to appeal was granted on three questions of law, of which only one is pertinent for the purposes of this appeal and it is this:

> Whether the filing of a single notice of appeal in respect of a decision on eight separate and distinct interlocutory applications is in compliance with the procedural rules as set out in the Rules of the Court of Appeal 1994 (RCA 1994)?

[24] The question was answered in the negative. The Federal Court opined that the word 'shall' in r 5(3) of the RCA 1994 is mandatory and as such, Santamil should have filed separate notices of appeal against the High Court decision allowing the defendants' separate applications to strike out the writ and statement of claim.

[25] The Federal Court stated that the main purpose of r 5(3) of the RCA

1994 is to allow the opposing parties to be enable to answer their cases respectively. The High Court judge had, in her grounds of judgment, explained in detail her decision in allowing the striking out application of each party in those separate applications. Santamil was in a position to identify the relevant points in the said judgment that she was dissatisfied with and thereafter file a separate notice of appeal against all the defendants setting out the details of the decisions in the notice of appeal. It was also noted that all eight applications had different grounds in support of the respective application, different filing dates and even different counsels. Even though the learned judge delivered a single judgment encompassing all of the eight applications, by way of procedural rules there were eight separate orders made by the learned judge.

[26] The Federal Court agreed with the Court of Appeal decision in *A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors* [2015] 4 MLJ 583 (CA). The Federal Court also cited the Court of Appeal's observations in paras [14] and [15] of the Court of Appeal's grounds of decision:

> [14] In our view, where the appeal is against one decision involving a single respondent or involving more than one respondent in a joint action, it will be in order for the appellant to state in a single notice of appeal that he is appealing against 'the whole of the said decision'. But where the appeal is against more than one decision arising from the separate interlocutory application made by different parties to the action, it is incumbent on the appellant to set out the details of the decision in the notice of appeal.
>
> [15] In the present case, since more than one decision was given by the High Court in favour of nine different applications arising from eight separate and distinct applications, it was imperative for the appellants to set out the details of each and every one of the decisions that they were appealing against. We do not think it was sufficient for the appellants to state in general terms in a single notice of appeal that their appeal was against the 'whole of the said decision' (in the singular) without specifying the particulars of the decision appealed against.

[27] In our considered view, the opinion of this court expressed in *Deepak Jaikishan* should be read in the light of the peculiar facts of that case. There were altogether eight distinct and separate applications filed by nine defendants, each of the eight distinct applications were supported by the affidavits by different deponents on different grounds in support, the eight applications were heard together by the learned judge, the outcome of the eight applications were delivered in a single decision by the learned judge which did not identify the separate orders issued by the High Court, the notice of appeal in question stated in vague and uncertain terms that it was an appeal '... against the whole of the said decision granting the order in terms of all the defendants' applications ...'.

[28] It is important to bear in mind that the primary objective of r 5(3) of the RCA 1994 is to enable the opposing party to be properly informed of the case they have to answer. If the opposing party is unable to fathom which decision or which part of a decision is being appealed against, it would lead to uncertainty and misapprehension on the part of the opposing party and as to what points they were required to answer to. Such a situation would undoubtedly cause prejudice and a miscarriage of justice to the opposing party.

[29] We think that it is also important to take a closer look at the Court of Appeal's decision in *A Santamil Selvi a/p Alau Malay @ Anna Malay & Ors v Dato' Seri Mohd Najib bin Tun Abdul Razak & Ors* [2015] 4 MLJ 583 (CA). We note that in para [27] of the Court of Appeal's grounds of decision the Court of Appeal referred to *Berjaya Development Sdn Bhd v Keretapi Tanah Melayu Bhd* [2014] 4 MLJ 606 and observed that '[o]ne of the issues raised was whether it was possible for one notice of appeal to be filed for three decisions that were given on two different dates by the High Court. It was held that this was possible provided 'the applications were heard together and the decision on the applications was given on a single date and the notice of appeal clearly described the applications involved and the respective decisions'. The notice of appeal in that case was held to be uncertain because it did not state which of the three decisions was decided on the date in question. The Court of Appeal then opined in para [30] that '[b]y way of comparison, the notice of appeal in the case before us, which was expressed to be against the whole of the 'decision' and against 'all' the respondents, gives the impression that the appeal was against one decision only and involving all the respondents. It does not convey with sufficient clarity which particular decision favouring which particular respondent were the appellants appealing against. That makes the notice bad for the ambiguity and uncertainty.' The Court of Appeal then went on to opine in para [31] that '[w]hat the appellant should have done was either to file seven separate notices of appeal or alternatively to file one notice of appeal setting out the details of each decision appealed against'. More pertinently, the Court of Appeal went on to say that '[o]n our part we take the view that the second option is the more practical option as it will avoid the filing of multiple records of appeal'.

[30] In the light of the abovementioned observations, we do not think that the decision of this court in *Deepak Jaikishan* should be read as laying down a strict and absolute rule that whenever there is more than one decision arising from separate interlocutory applications, the filing of a single notice of appeal is not in compliance with the RCA 1994. We concur with the opinion of the Court of Appeal (see para [29] above) that the filing of a single notice of appeal is permissible subject to a caveat — all the decisions appealed against must be clearly and concisely set out with the relevant details and particulars of each decision in the notice of appeal.

[31] In situations where, a preliminary objection is taken against a notice of appeal in the Court of Appeal or where a motion is filed to that effect, it is therefore incumbent upon the Court of Appeal to scrutinise the notice of appeal in question. It is for the Court of Appeal to consider whether the appeal relates to a single decision, or more than one decision, or is against part of the decision or decisions given; and if so, whether the decisions in question have been clearly and concisely identified. There should not be any ambiguity or doubt relating to the decision appealed against.

[32] On a close scrutiny of the first appeal's notice of appeal (see para [5] above) we are satisfied that the two decisions appealed against, ie, the decision after full trial and the amendment decision have been concisely and clearly identified in the following words '... tidak berpuas hati dengan keseluruhan keputusan Yang Arif Tuan Azizul Azmi bin Adnan yang diberikan di Mahkamah Tinggi di Kuala Lumpur pada 29 haribulan September 2017, *termasuk (tetapi tidak terhad)* kepada Kandungan 129 (permohonan defendan untuk meminda 'Pembelaan Terpinda Semula' bertarikh 11.2.2016, yang difailkan pada 14.3.2017) ...'. (Emphasis added.) As the two decisions have been clearly set out, there cannot be said to be any ambiguity as to what decision was being appealed against. Therefore, we do not think it can be said that the respondent has suffered any prejudice or miscarriage of justice.

[33] Similarly, the decisions appealed against in the notice of appeal in the second appeal (see para [12] above) had also set out the specific details and particulars of that part of the decision of the High Court order which the appellant was appealing against. We do not see how the respondent could have been misled as to which part of the decision the appellant was unhappy with.

[34] Accordingly, we are of the view that the details and particulars of the decision after trial and the decision on the amendment application in the first appeal and the details of that part of the decision in the second appeal have been clearly identified and set out in the respective notices of appeal. As such, there is no ambiguity as to what was appealed against and the other parties were put on proper notice. We do not think that the respondents in either appeal could have been prejudiced nor has any miscarriage of justice been occasioned thereby.

[35] For the foregoing reasons, questions (a), (b) and (c) of the first appeal are answered in the negative. Questions (1) of the second appeal is answered in the affirmative. In the circumstances, we do not think that it is necessary to answer questions (2)–(4). The first appeal and the second appeal are therefore allowed with costs. We ordered the two cases to be remitted to the Court of Appeal to be heard on the merits.

Appeal allowed; both cases to be remitted back to COA to be heard on merits.

Reported by Ashok Kumar